In the High Court of Punjab and Haryana, Chandigarh

I.T.R. No. 78 of 1995

Date of Decision: 9.5.2007

The Commissioner of Income Tax, Patiala …Petitioner

Versus

M/s Bharat Rice Mills, Alipur Link Road, Patiala …Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. Yogesh Putney, Advocate,
for the revenue.

JUDGMENT

M.M. KUMAR, J.

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribuna'), arising out of order dated 15.11.1994, passed in I.T.A. No. 1305 of 1989, in respect of assessment year 1986-87:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the penalty of Rs. 47,920/- levied u/s. 271(1)(c) of the Income-tax Act, 1961?"

The facts are not in dispute. The assessee was engaged in the business of rice shelling. For the assessment year 1986-87, the assessment was completed under Section 143(1) but was

subsequently selected for scrutiny. Survey operation took place at the business premises of the assessee on 26.11.1987. The assessee, during the course of survey surrendered a sum of Rs. 1,00,000/- on account of some discrepancies found under the heads of sales tax (Rs. 17,525/-), difference in depreciation (Rs. 23,905/-) and machinery account (Rs. 58,570/-). Accordingly, a revised return was filed declaring the total income at Rs. 1,79,220/- and the assessment was completed on the declared income, under Section 143(3) of the Act. Thereafter, the Assessing Officer issued a penalty notice for concealment of surrendered income of Rs. 1,00,000/-. The plea of the assessee that the revised return had been filed in good faith and on an undertaking given by the department at the time of survey that no penalty was to be levied on the surrendered income, was not accepted. However, the plea was not accepted and the penalty of Rs. 47,920/- under Section 271(1)(c) of the Act was imposed. The order of the Assessing Officer was upheld by the Commissioner of Income Tax (Appeals). In further appeal to the Tribunal, the claim of the assessee was accepted by recording categorical finding that no concealment could possibly be proved. In respect of sales tax liability, the Tribunal has held that it could not be considered an act of concealment because the liability was claimed as a deduction on the ground that it was a valid liability. The depreciation was found to be result of certain mistake in calculation. The observation of the Tribunal in the penultimate para is as under:-

"3. We have considered the rival contentions and we are of the view that the surrender made a respect of the three items does not justify the levy of penalty because simply on the basis of surrenders, no concealments can be positively proved. As regard that amount shown in respect of sales-tax liability, this can not be said to be an act of concealment because the liability was claimed as a deduction on the ground the (that?) it was a valid liability. So far as the amount shown in respect of depreciation is concerned, it is again found to be a result of certain calculation mistake only. Here again, we do not find any sufficient reason to conclude that there was any element of concealment. The third amount in the machinery account also does not appear to on account of any concealment. The revenue authorities have not specified if any machine was found to have been purchased out side the books of account. Simply because the assessee found it appropriate to be mention certain amount in the machinery account, that will not prove any concealment. The revenue was under obligation to show that certain machinery had been purchased by the assessee by making undisclosed investment. Moreover, the surrender letter makes it clear that the assessee had opted to file a revised return subject to no penalty. Though there is nothing to indicate that

this conditional offer was accepted but that did not also suggests that this was rejected by the revenue authorities when the offer was so made. Looking to the nature of surrender and the three items on which the total amount was spread-over, we are of the view that the concealment has not been proved by positive evidence."

The surrender of income under the three heads have been found as a fact and not to be a concealed income nor any intrinsic proof has been furnished. There is no material on record to enable this Court to take a view different than what has been taken by the Tribunal. We do not find the conclusion recorded by the Tribunal to be perverse. Accordingly, the question referred is answered against the revenue and in favour of t he assessee.

The reference is disposed of accordingly.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

May 9, 2007
Pkapoor